

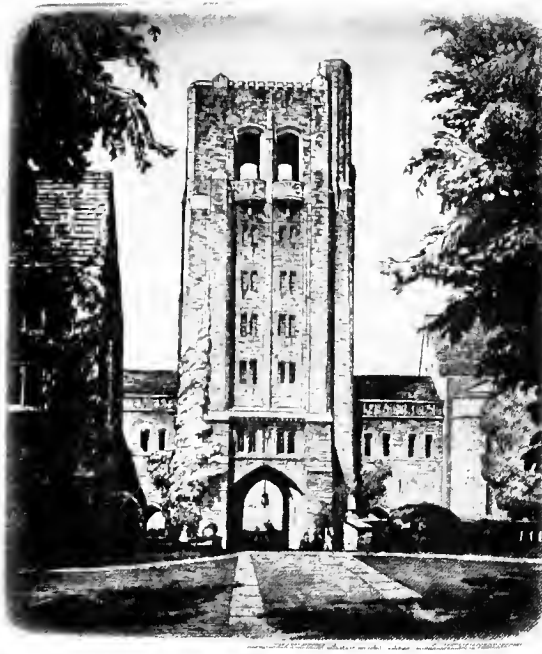
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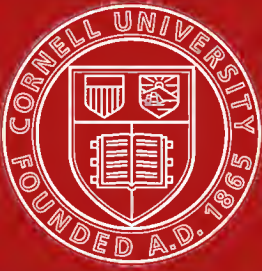


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MILITARY LAW

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MILITARY LAW

Q. What are the four classes of Military Jurisdiction?

- A. 1. Military Government (the law of hostile occupation).
2. Martial Law at home (a domestic fact).
3. Martial Law applied to the Army.
4. Military Law.

Q. What is Military Government, or the law of hostile occupation?

- A. Military power exercised by a belligerent by virtue of his occupation of an enemy's territory. This belongs to the Law of War and, therefore, to the Law of Nations. When a conquered territory is ceded to the conqueror, military government continues until civil government is established by the new sovereign.

Q. What is Martial Law at home?

- A. Military power exercised in time of war, insurrection or rebellion, in parts of the country retaining their allegiance, and over persons and things not ordinarily subjected to it.

Q. What is the Martial Law Applied to the Army?

- A. The military power extending in time of war, insurrection or rebellion, over persons in the military service, as to obligations arising out of such emergency and not falling within the domain of military law, or otherwise regulated by law.

Q. What is Military Law?

- A. The legal system that regulates the government of the military establishment. It is a branch of the municipal law, and in the United States derives its existence from special constitutional grants of power.

Q. What is the source of military jurisdiction in the United States?

- A. The Constitution.

Q. From what sources is Military Law derived?

- A. It is derived from both written and unwritten sources.

Q. What are the written sources of Military Law?

- A. The Articles of War, enacted by Congress, August 29, 1916.
2. Statutory enactments relating to the military service.
3. The Army Regulations.
4. The General and Special Orders, and decisions promulgated by the War Department and by department, post and other commanders.

Q. What is the source of the unwritten military law?

- A. The custom of war, consisting of the customs of the service both in peace and war.

Q. What are the three kinds of Military Tribunals?

- A. 1. Military Commissions and Provost Courts, for the trial of offenders against the laws of war and under Martial Law.
2. Courts-Martial—General, Special and Summary—for the trial of offenders against military law.
3. Courts of Inquiry, for the examination of transactions of, or accusations or imputations against, officers and soldiers.

Q. What persons are subject to Military Law?

- A. 1. All officers and soldiers belonging to the regular army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty, or for training in the said service, from the dates they are required by the terms

- of the call, draft, or order to obey the same.
2. Cadets.
 3. Officers and soldiers of the Marine Corps, when detached for service with the armies of the United States, by order of the President.
 4. Officers and men of the Medical Department of the Navy, serving with a body of Marines detached for service with the Army, in the same manner as officers and men of the Marine Corps who may be so serving.
 5. All retainers to the camp and all persons accompanying or serving with the armies of the United States, outside of the territorial jurisdiction of the United States; and, in time of war, all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to the Articles of War.
 6. All persons under sentence adjudged by courts-martial.
 7. Army field clerks.
 8. Field Clerks, Quartermaster Corps.
- Q. What are the several kinds of courts-martial in the United States service?*
- A. 1. The General court-martial.
 2. The Special court-martial.
 3. The Summary court-martial.
- Q. Who may be detailed as members of a court-martial?*
- A. All officers in the military service of the United States and officers of the Marine Corps when detached for service with the Army by order of the President.
- Q. What are the exceptions?*
- A. 1. No officer may sit as a member of a general or special court-martial when he is the accuser or a witness for the prosecution.
 2. Chaplains, veterinarians, dental surgeons, and second lieutenants in the Quartermaster Corps are not in practice detailed as members of courts-martial.
- Q. What is the composition of a general court-martial?*
- A. It may consist of any number of officers from 5 to 13, inclusive.
- Q. What is the minimum number that may continue to transact business?*
- A. Five. While a number less than five cannot be organized as a general court-martial or proceed with a trial, they may perform such acts as are preliminary to the organization and action of the court.
- Q. What action is taken when the court is reduced below five?*
- A. It will direct the judge advocate to report the facts to the convening authority, and await his orders.
- Q. What is the composition of a special court-martial?*
- A. It consists of any number of officers from three to five, inclusive. When the members are reduced below three, a report of the fact will be made by the judge advocate to the convening authority, who will detail enough officers to enable the court to proceed.
- Q. What is the composition of a summary court-martial?*
- A. It consists of one officer.
- Q. Under what conditions may retired officers of the Army be detailed as members of courts-martial?*
- A. 1. When, in time of peace, they are assigned to active duty with their own consent.
 2. When, in time of war, they are employed on active duty in the discretion of the President.
 3. At other times they are not available for court-martial duty.
- Q. Under what conditions are members of the Officers' Reserve Corps available for court-martial duty?*
- A. When they are ordered to active service by the Secretary of War.
- Q. Under what circumstance may officers of the Regular Army and officers of the Marine Corps serve on courts-martial together?*
- A. When troops of the Marine Corps are detached, by order of the President, for service with the Army.
- Q. Is there any distinction between officers of the regular service and other officers with reference to their eligibility for duty as members of a court-martial?*
- A. No distinction now exists for the trial of any person subject to military law in the matter of eligibility for court-martial duty among the various classes

of officers in the military service of the United States.

Q. May an officer be tried by officers junior to him in rank?

A. In no case, when it can be avoided, shall an officer be tried by officers junior to him in rank. This provision is not mandatory upon the convening authority. Its effect is to leave to that officer—as the final authority to judge—the determination of rank of the members, with only the general instruction that seniors in rank to the accused shall be selected, as far as the exigencies and interests of the service will permit.

Q. What officers are empowered to appoint general courts-martial?

- A. 1. The President of the United States.
2. The commanding officer of a territorial division.
3. The commanding officer of a territorial department.
4. The Superintendent of the Military Academy.
5. The commanding officer of an army.
6. The commanding officer of an army corps.
7. The commanding officer of a tactical division.
8. The commanding officer of a separate brigade.
9. The commanding officer of any district or any force or body of troops, when empowered by the President to do so.

Q. When the person having the authority to appoint a court-martial is the accuser, what action is taken?

A. The court is appointed by a higher competent authority.

Q. May officers be tried before courts-martial appointed by the Superintendent of the Military Academy?

A. They may not.

Q. Under what authority may the President institute a general court-martial?

- A. 1. As commander-in-chief of the Army.
2. When the accuser is the superior officer of the army, and the law requires the next higher commander to appoint the court.
3. In the particular cases provided in 1230 of the Revised Statutes.

NOTE.—When an officer, dismissed by order of the President, makes a written applica-

tion for trial, setting forth under oath that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial to try such officer on the charges on which he shall have been dismissed. And, if a court-martial is not so convened within six months from the presentation of such application for trial, or if such court, being convened, does not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void. (R. S. 1230.)

Q. What authority has the appointing officer over a court-martial?

A. He may control its existence, dissolve it and determine the cases to be referred to it for trial, but he can not control the court in the exercise of powers vested in it by law.

Q. What authorities may appoint a special court-martial?

- A. 1. The commanding officer of a district.
2. The commanding officer of a garrison.
3. The commanding officer of a fort.
4. The commanding officer of a camp.
5. The commanding officer of any place where troops are on duty.
6. The commanding officer of a brigade.
7. The commanding officer of a regiment.
8. The commanding officer of a detached battalion.
9. The commanding officer of any detached command.

Q. May a commanding officer appoint himself as a member of a special court-martial?

A. He may not.

Q. What authorities may appoint a summary court?

A. Any commanding officer.

Q. When there is only one officer on duty with a command what action is taken with reference to the appointment of a summary court officer?

A. When but one officer is present with a command, he is the summary court officer of that command and shall hear and determine cases brought before him. In such case no order appointing the court will be issued, but the officer will enter on the record that he is "the only officer present with the command."

Q. Who has power to appoint the judge advocate of a court-martial?

A. The officer empowered to appoint the court.

Q. From what ultimate source does the court-martial derive its existence?

A. From Congress.

Q. To what class of cases is the jurisdiction of the court-martial limited.

A. Its jurisdiction is limited to criminal cases.

Q. Are the decisions of courts-martial subject to review?

A. They are not subject to review by any courts whatsoever. The United States Courts may, on writ of habeas corpus, inquire into the legality of the detention of a person held by military authority. Such inquiry may be made at any time, either before or during trial, or while sentence is being served, and the court will order such person discharged if it appears to the satisfaction of the court that any of the statutory requirements conferring jurisdiction have not been fulfilled.

Q. What action is necessary to legalize the action of a court-martial?

A. The approval, or confirmation, of the proper commanding officer. With such approval or confirmation, sentences of courts-martial become operative, are as effective as the sentences of civil courts having criminal jurisdiction, and are entitled to the same legal consideration.

Q. What conditions must obtain as to the legal jurisdiction of a court-martial and the validity of its judgments?

A. It must be shown:

1. That it was convened by an officer empowered by statute to convene it.
2. That the persons who sat on the court were legally competent to do so.
3. That the court thus constituted was invested by the acts of Congress with the power to try the person and the offense charged.
4. That its sentence was in accordance with the law.

Q. What is the rule of procedure when courts-martial and civil courts have concurrent jurisdiction?

A. In accordance with the principle of comity, as between the military and civil tribunals, in cases of concurrent jurisdiction the court which first at-

taches in a particular case is entitled to proceed to its termination.

Q. What is the procedure when a court-martial has duly assumed jurisdiction over an offence and over the person committing it, and is divested of that jurisdiction by a wrongful act of the accused?

A. A court-martial having once assumed jurisdiction of a case, can not be divested, by any wrongful act of the accused, of its authority or be discharged from its duty to proceed to fully try and determine according to law and its oath. Thus, the fact that the accused, after arraignment and during the trial, has escaped from military custody furnishes no ground for not proceeding to a finding and, in the event of conviction, to a sentence in the case; the court may and should find and sentence as in any other case.

Q. What are the exceptions to the rule that military jurisdiction terminates when a person is legally separated from the service?

- A. 1. Persons guilty of fraud against the United States.
 2. Under Section 1230 Revised Statutes (see ante.).
 3. Persons serving sentence of a court-martial.
 4. Where a discharge is secured by fraud.
 5. Desertion in previous enlistment.

NOTE.—For an offence committed prior to the expiration of his term of enlistment, a soldier may be held in the service and tried after the expiration of his term. So, also, a soldier may be tried for offences committed while making up time lost by desertion; through absence without leave; through disease or injury, the result of his own misconduct.

Q. Over what persons and offences do general courts-martial have jurisdiction?

- A. 1. Any person subject to military law; for any crime or offence made punishable by the Articles of War.
 2. Any person other than (1) above, who by the law of war is subject to trial by military tribunals; for any crime or offence in violation of the law of war.

Q. What limits are placed on the punishing power of a general court-martial?

A. Punishment is discretionary with a general court-martial except:

- (a) When mandatory under the law.
- (b) When limited by order of the President, under the 45th Article of War.
- (c) That the death penalty can be imposed, only when specifically authorized.

Q. Name some of the mandatory sentences?

- A. 1. The death sentence is mandatory in the case of spies.
2. Dismissal is mandatory for conduct unbecoming an officer and a gentleman.
3. Either death or imprisonment is mandatory for murder or rape.

Q. Over what persons and offences do special courts-martial have jurisdiction?

- A. 1. Any person subject to military law, except:
- (a) An officer.
 - (b) Any person subject to military law and belonging to a class or classes excepted by the President.

2. Any crime or offence—not capital—made punishable by the Articles of War.

NOTE.—Under (b), cadets and soldiers holding certificates of eligibility for promotion are excepted from the jurisdiction of special courts-martial.

Q. What are the capital crimes under the Articles of War?

- A. 1. Peace offences:
- (a) Assaulting or disobeying a superior officer.
 - (b) Mutiny or sedition.
 - (c) Failure to suppress mutiny or sedition.
2. War offences:
- (a) Desertion.
 - (b) Advising or aiding another to desert.
 - (c) Misbehavior before the enemy.
 - (d) Subordinates compelling a commander to surrender.
 - (e) Improper use of countersign.
 - (f) Forcing a safeguard.
 - (g) Relieving, corresponding with, or aiding the enemy.
 - (h) Spies.
 - (i) Misbehavior of sentinel.

Q. What is the limit of the punishing power of a special court-martial?

A. 1. Confinement for six months.

2. Forfeiture of pay for six months.

NOTE.—They can not adjudge dishonorable discharge. Reduction of noncommissioned officers to the ranks and reduction of privates in grade may be adjudged in addition to the above.

Q. Over what persons and offences do summary courts-martial have jurisdiction?

A. 1. Any person subject to military law, except:

- (a) An officer.
- (b) A cadet.
- (c) A soldier holding a certificate of eligibility for promotion.
- (d) A noncommissioned officer who objects to trial. (Except when ordered by an officer competent to bring him to trial before a general court-martial.)
- (e) Any person belonging to a class or classes of persons excepted by the President from the jurisdiction of the summary court-martial.

2. For any crime or offence—not capital—made punishable by the Articles of War.

Q. What are the limits of punishment of a summary court-martial?

- A. 1. Confinement for three months.
2. Forfeiture of three months' pay.

NOTE.—Reduction to the ranks in the case of noncommissioned officers, etc. See note, second question above.

Q. What restrictive action is taken against an officer charged with an offence?

- A. An officer charged with crime or a serious offence against the Articles of War shall be placed in arrest by the commanding officer, and, in exceptional cases, an officer so charged may, by the same authority, be placed in confinement.

Q. What restrictive action is taken against a soldier charged with an offence?

- A. 1. A soldier charged with crime or a serious offence against the Articles of War shall be placed in confinement; when charged with a minor offence, he may be placed in arrest.

NOTE.—In practice, the general rule observed is: if a soldier is to be tried by a general court-martial, he will be placed in con-

finement; if he is to be tried by an inferior court, he is placed in arrest.

Q. Does the fact that a person charged with an offence has not been placed in arrest or confinement affect the jurisdiction of the court?

A. It does not.

Q. In whom is vested the power of placing officers in arrest?

A. Only commanding officers, except as provided for in the 68th Article of War:

All officers and noncommissioned officers have power to part and quell all quarrels, frays and disorders among persons subject to military law and to order officers who take part in the same into arrest, and other persons subject to military law who take part in the same into arrest or confinement, as circumstances may require, until their proper superior officer is acquainted therewith . . .

Q. How is the arrest of an officer effected?

A. He may be placed in arrest by his commanding officer in person or through another officer; by a verbal or written order or communication, advising him that he is placed in arrest, will consider himself in arrest, or words to that effect.

Q. What is the official and social status of an officer in arrest?

A. 1. He cannot exercise command of any kind.
2. He will not wear his sword.
3. He will not visit officially his commanding officer or other superior officer unless directed to do so.
4. His applications and requests of every nature will be made in writing.

Q. What is the rule in regard to placing medical officers in arrest?

A. In ordinary cases, where inconvenience to the service would result, a medical officer will not be placed in arrest until the court-martial convenes for his trial.

Q. What action is necessary in placing a soldier in confinement?

A. Except as provided in the A. W. 68 (ante), or when restraint is necessary, no soldier will be confined without the order of an officer, who shall previously inquire into his offence. It

is proper, however, for a company commander to delegate to the noncommissioned officers of his company the power to place enlisted men in arrest when restraint is necessary, but such action must be reported at once to the company commander.

Q. What is the status of noncommissioned officers in arrest?

A. They will not be called upon to perform any duty in which they may be called upon to exercise authority or control over others. When placed in confinement, they will not be sent out to work.

Q. Who may arrest deserters from the military service?

A. Any civil officer having authority under the laws of the United States or of any State, Territory, district or possession of the United States.

Any citizen, under an order or by direction of a military officer.

Q. What is a military charge?

A. A military charge corresponds to a civil indictment. It consists of two parts—the technical charge and the specification. The former alleges the offence in general terms, and the latter sets forth the facts constituting the same.

Q. What requirement must a charge fulfil?

A. It must be laid under the proper Article of War or other statute.

Q. What requirements must the specification fulfil?

A. It must set forth in simple and concise language facts sufficient to constitute the particular offence; and in such manner as to enable a person of common understanding to know what is intended.

Q. Who may prefer charges?

A. Any officer. This includes officers of the Army on the retired list and those of the Officers' Reserve Corps in active service. An officer is not disqualified by reason of the fact that he himself is under charges or in arrest.

Q. What is the rule regarding the numbering of charges and specifications?

A. Where there are several specifications under one Article of War the usual manner is to place them all under one charge, rather than to make several charges with one specification under

each. Where there are several specifications under one charge they will be consecutively numbered, and where there are several charges, the same will be consecutively numbered.

Q. To what statements should a charge be limited?

A. To a designation of the Article of War violated.

Q. What elements should a specification contain?

A. 1. The name, rank, title, and organization of the accused person, if he belongs to the Army of the United States, should be stated. If the accused is a civilian, he should be so described as to establish the fact that he is subject to trial by military tribunals.

2. The facts constituting the offence charged will be set forth briefly but clearly, together with the place and time of commission. Care should be taken that all the elements of the offence as described in the Article of War, or the other statute, are set forth. The specification must be appropriate to the charge.

Q. What is the routine procedure in preparing and forwarding charges against an enlisted man?

A. All charges, for trial by court-martial, will be prepared in triplicate. The prescribed charge-sheet will be used as a first sheet, ordinary paper being used for such additional sheets as may be necessary.

They will be accompanied:

(a) Except when the trial is to be had by summary court, by a brief statement of the testimony expected from each material witness, both for the prosecution and for the defence, together with all available and necessary information as to any other actual or probable testimony or evidence in the case; and

(b) In the case of a soldier, by properly authenticated evidence of convictions, if any, during the preceding year of his current enlistment.

The charges are forwarded by the officer preferring them

to the officer exercising summary court-martial jurisdiction over the command to which the accused belongs who will refer them to a court-martial in his jurisdiction for trial, or forward them to the next superior authority exercising court-martial jurisdiction over the command to which the accused belongs or pertains.

(c) When trial is to be had by summary court, the completed charges become the record of trial. A copy will be completed and sent to the company or other commander. A second copy will be completed and forwarded to the officer exercising general court-martial jurisdiction over the command.

(d) When trial is had by special or general court-martial, two copies of the charges will be referred to the trial judge-advocate, one copy to be furnished by him to the accused. The third copy will be used for purposes of record in the office of the officer appointing the court.

Q. What investigation is made before charges for trial by general court-martial are forwarded?

A. The officer exercising summary court-martial jurisdiction over the command to which the accused pertains either carefully investigates the case himself or causes an officer other than the officer preferring the charges to investigate them carefully and report to him the result of such investigation. The officer investigating the charges will afford to the accused an opportunity to make any statement, offer any evidence, or present any matter in extenuation that he may desire to have considered in connection with the accusation against him.

Q. What elements must be included in the endorsement by which charges are forwarded to superior authority?

A. 1. The name of the officer who investigated the charges.

2. The opinion of such officer as to

whether the several charges can be sustained.

3. The substance of the statement, if any, that the accused may voluntarily make in connection with the case.
4. A summary of the extenuating circumstances, if any, connected with the case.
5. His recommendation as to the action to be taken.

Q. What period is allowed the accused to prepare for his defence?

A. Five days.

Q. What is the procedure of a General Court-Martial?

A. The following is the order of institution and procedure of a General Court-Martial:

1. The order instituting the court is issued from the headquarters of the officer competent to appoint a general court-martial. The body of this order designates the date, hour, and place where the court is to meet; details the members of the court by rank, name, and organization in the order of their relative rank; details the judge advocate of the court by his rank, name and organization; and authorizes the appointment of a stenographic reporter and the necessary travel.

2. The members of the court assemble at the place and hour designated in the order for the first session of the court. Thereafter, they meet in accordance with the adjournment, which is usually "to meet at the call of the president." When the court is detailed to try a number of cases this procedure is usually modified by having the first meeting on notice by the president, through the judge advocate, that there is business to be transacted.

The members of the court wear the uniform prescribed by the president (usually dress), and sabers. The judge advocate, the accused and his counsel wear the same uniform as the court, without side arms. Military witnesses wear the uniform of the court, with side arms. When an enlisted man is tried for desertion, he appears before the court in the dress that he wore at the time of his apprehension or surrender.

3. When the court is ready to pro-

ceed, the members take seats at a table provided for the purpose. The president sits at the head of the table. The other members at his right and left, alternately, according to relative rank. The judge advocate sits at the foot of the table or at a separate table. The accused and his counsel sit at a table conveniently placed. A witness, when testifying, is seated near the judge advocate, and the reporter is placed near the witness' chair. The interpreter is located at a convenient place (see figure).

4. After the members of the court are seated, the judge advocate calls the roll, using the order instituting the court, after which he announces the result to the president as: *Sir, all are present, or so and so is absent*, stating the cause or authority for the absence if it is known. The president directs the judge advocate: *"Proceed with the business of the court."*

5. The judge advocate then causes the accused, his counsel, the reporter, and interpreter to enter the court room and, while he and they remain standing, announces: *The judge advocate is prepared to proceed with the case of the United States versus Private John Doe, Company "K," 48th Infantry.*

The president announces: *If there is no objection, the court will proceed to the trial of Private Doe.*

The judge advocate announces: *The accused desires to introduce First Lieutenant William Williams, 48th Infantry, as his counsel*, or, in case the accused does not desire counsel, the judge advocate states: *The accused states that he does not desire counsel.*

6. The reporter of the court is then sworn by the judge advocate, administering the following oath, both standing: *You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God.*

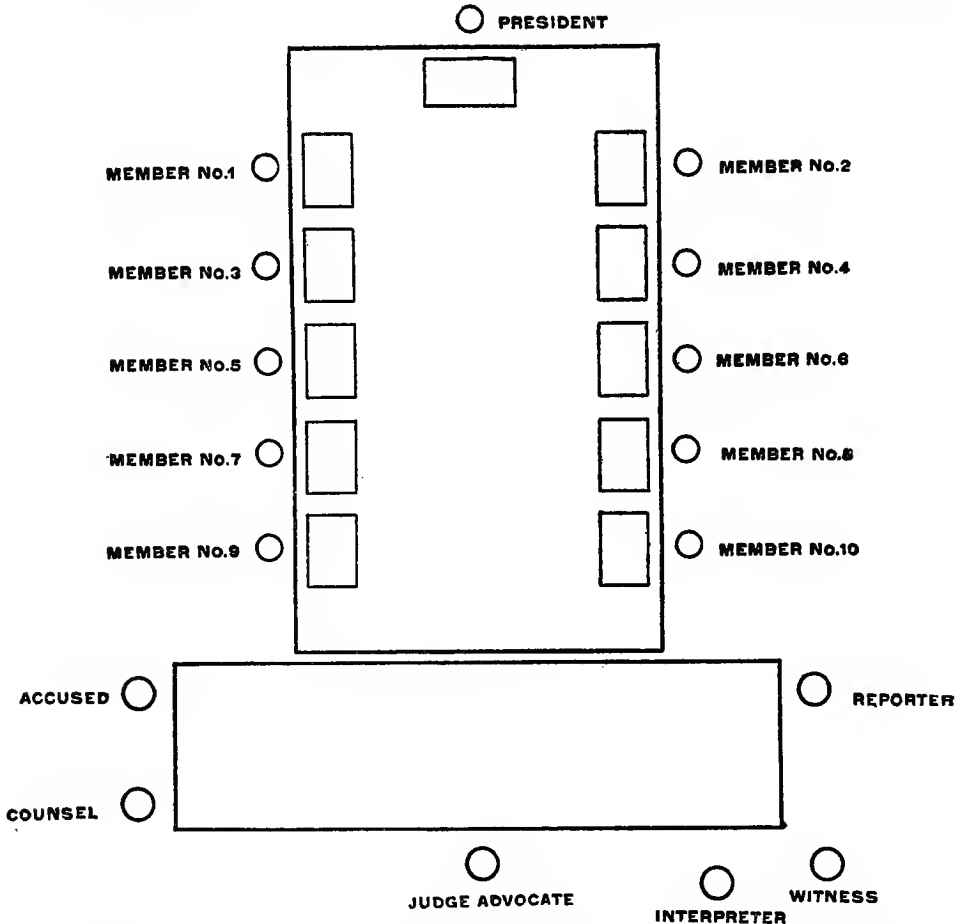
- 6a. The judge advocate asks the accused if he desires a copy of the record of his trial, and gives the reporter the necessary instructions.

7. The judge advocate and the accused stand up. The judge advocate reads aloud to the accused the order convening the court, and together with

any other orders modifying the detail, and states to the accused: *Of the officers named in this order (or these orders), the following are present* (names the officers of the court present). *Have you any objection to being tried by any officer present?* This is known in military law as "the right of challenge."

of the accused: *The accused objects to Captain Jones, on the ground that (stating the grounds upon which the objection is based).* The challenged member is then given an opportunity to make a statement in reply to the challenge.

NOTE.—A positive declaration by the challenged member that he is not prejudiced



NOTE.—Members of a general or special court-martial may be challenged by the accused or by the judge advocate, but only for cause stated to the court. The court determines the relevancy and validity thereof, and does not receive a challenge to more than one member at a time. (18th Article of War.)

Should the accused object to being tried by any member of the court present, the counsel would state in behalf

against the accused, nor interested in the case, is ordinarily satisfactory to the accused.

If the statement is not satisfactory to the accused, he may at this time state: *I am not satisfied with the statement of Captain Jones and request that he be put upon his voir dire.* The judge advocate and the challenged member standing, the judge advocate administers the following oath to him: *You swear that you will true answers make*

to questions touching upon your competency as a member of the court in this case. *So help you God.* The member is then examined by the accused (generally through his counsel), in the same manner that a juror is examined in criminal courts. Upon the completion of this examination the president announces: *The court will be closed.*

8. The challenged member, the accused and his counsel, and spectators, if any; the judge advocate, the reporter, the interpreter, withdraw from the court room and the court is said to be "closed." The remaining members of the court deliberate upon the question as to whether or not the challenged member shall sit as a member of the court in the case. They arrive at a decision by vote, beginning with the junior member, the majority carrying the decision.

NOTE.—Courts are liberal in passing upon challenges and, when there is any valid reason given, sustain them.

Having arrived at a decision, the president announces that the court is opened and the judge advocate is so notified. This is generally done by ringing a bell.

9. Those who withdrew now enter the court room and take their places and the president announces the decision of the court as: *The objection to Captain Jones is sustained, and he will be excused as a member of the court in this case, or The objection to Captain Jones is not sustained and he will sit as a member of the court in this case.*

If the challenged member be excused, he will immediately withdraw. All members of the court junior to him in rank will change their seats so as to preserve the prescribed arrangement of the court according to rank.

The judge advocate then interrogates the accused: *Have you any objection to any other member of the court, present?* Should the accused have objection, he will challenge the member objected to and the same procedure as above will be observed. If he does not object to any other member he will state: *There is no further objection.* The judge advocate may now in like manner challenge any member of the court.

Should any member of the court believe himself to be the accuser in the case, he will at this point formally announce that fact to the court, whereupon he will be excused. When the judge advocate, the accused, his counsel, or any member of the court has reason to believe that any member thereof may be called as a witness for the prosecution, such belief shall be communicated to the court and, if the judge advocate states that the member is to be called, he will be excused. When there are no further challenges to be considered by the court, the president announces: *The court will be sworn.*

10. All the members of the court, the judge advocate and all other persons in the court room stand, and the following oath is administered by the judge advocate—who holds right hand uplifted—to the members of the court: *You (naming each member of the court present) do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor or affection, according to the provisions of the rules and articles for the government of the Armies of the United States, and if any doubt should arise not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases, and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be punished by the proper authority, except to the judge advocate and assistant judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God.*

As the name of each member of the court is called he raises his right hand and retains it in that position until the reading of the oath is completed and acknowledged.

While all remain standing, the presi-

dent of the court administers the following oath to the judge advocate: *You (naming the judge advocate) do swear (or affirm) that you will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed by the same. So help you God.*

Upon completion of the swearing of the court and the judge advocate, the court is said to be organized.

11. At this point, if there is an interpreter, he is sworn by the judge advocate—both standing—with the following oath: *You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God.*

12. If a delay in the case is necessary, either on the part of the prosecution or the defence, it should be made at this time.

13. The judge advocate then reads the charges and specifications preferred against the accused and the accused is called upon to plead to them. In case of several charges and specifications, the order pursued is to arraign on the first, second, etc., specifications to the first charge, then on the first charge, and so on with the rest. During the reading of the charges the judge advocate and the accused stand. The judge advocate puts the question to the accused after the reading of each specification and charge: *How plead you?* All of this constitutes the arraignment.

14. The accused is called upon to plead to each charge and specification. Ordinarily the plea of the accused is *guilty* or *not guilty* to each charge and specification; or, *guilty of a specifications excepting certain words, and of the excepted words not guilty*; or when charged with an offence which includes a lesser one of kindred degree, *guilty of the specification except certain words, substituting certain other words, and to the charge not guilty, but guilty of the lesser kindred offense.*

For example: in a trial for desertion, the accused, by substituting words in the specification that covers the offence of absence without leave, may plead guilty to them, but not guilty to the part of the specification that covers desertion. In the charge, he may substi-

tute: *as not guilty of desertion but guilty of absence without leave.*

The pleas are generally entered by the counsel on behalf of the accused. If the accused questions the jurisdiction of the court he may here enter a plea to the jurisdiction, or, if any other plea is appropriate, it must be entered at this time. For example: a plea in abatement, or a plea in bar of trial.

15. Should the accused plead guilty, the president of the court will halt the proceedings and explain to the accused the meaning of such a plea, ask him if he understands the same, and question him to such extent that there can be no misunderstanding of the action he has taken in pleading guilty. He will explain to the accused the penalty that the court may impose for such an offence and make certain that the accused fully understands it.

16. The prosecution, conducted by the judge advocate, then begins the presentation of the case. The judge advocate announces: *The judge advocate desires to introduce (naming the witness) as a witness for the prosecution.* The witness enters. The judge advocate directs him to hold up his right hand. (If he is wearing gloves, the judge advocate directs him to remove the right-hand glove). The following oath is administered by the judge advocate, both he and the witness standing: *You swear or affirm that the evidence that you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God.*

The judge advocate directs the witness to be seated in the witness chair and cautions him to speak slowly and distinctly to the court in order that all may hear what he has to say. The judge advocate then proceeds to the direct examination of the witness, in the case of a military witness, by asking: *State your name, rank, organization and station,* or in the case of a civilian witness, *State your name and residence* Then follows the identification of the accused: *Do you know the accused? If so, state who he is.*

Then follow any other questions that the judge advocate desires to ask

the witness in the prosecution of the case.

17. At the conclusion of the direct examination, the judge advocate announces that fact and the witness is turned over to the defence for the cross-examination by the counsel for the accused. The judge advocate is then given an opportunity to re-examine the witness and the defense to re-cross-examine the witness. At the conclusion of all this the president inquires: *Questions by the members of the court?* and the members of the court are then permitted to ask any questions they desire. Upon the completion of this, the witness is excused.

18. Should a question be asked of a witness, either by the prosecution or by the defence, to which objections is made by the opposite party in the case, the party objecting will announce, before the witness has had an opportunity to answer: *I object to that question*, after which he states the grounds upon which the objection is based. The opposite party is then given an opportunity to reply to the objection and, after all conversation on the matter has been concluded, the president announces: *The court will be closed*. All persons in the court room, other than the members of the court, will withdraw. The court deliberates the question and a vote is taken on the subject, starting with the junior member of the court. The majority rules. If there is a tie vote, the proposition is lost. The president announces: *The court is opened*. Those who withdrew are recalled, as indicated in paragraph 8. The president announces: *The objection is sustained, and the question will not be answered*, or, *The objection is not sustained, and the witness will proceed to answer the question*. In the latter case the question is again asked and the witness required to answer.

19. After all the witnesses for the prosecution have been examined the judge advocate will introduce any documentary evidence he may have to place before the court for its consideration. Documentary evidence may be introduced at any time, though the rule is

that it will be introduced at the conclusion of the examination of the witnesses for one side or the other.

After the judge advocate has concluded his side of the case for the government he announces: *The prosecution here rests*. The witnesses for the defence are then called as indicated by the counsel for the accused and their examination proceeds as for those of the prosecution. The counsel for the accused conducts the direct examination and the judge advocate the cross-examination. The defence then submits any documentary evidence that it desires considered and, when there is nothing further, the counsel announces: *The accused desires to be sworn as a witness in his own behalf*, or, *The accused desires to make a verbal statement in his own behalf*, or, *The accused desires to submit a written statement in his own behalf*. In the first case, where the accused is sworn as a witness in his own behalf, he is examined by the counsel for the defence and is subject to cross-examination by the judge advocate and to questions by members of the court. In the second case the accused merely makes a verbal statement to the court, which is unsworn, and may be taken for what it is worth; in the third case the accused submits a written statement to the court which is read by the judge advocate and appended to the record of the court as a part of the record in the case.

20. Following this, the counsel for the defence is given an opportunity to make a summing up of the case and an argument for the accused. This is followed by the action of the judge advocate who may make answer to the argument of the defence. In case the judge advocate has nothing further, he announces: *The judge advocate submits the case without remark*. In any event, the judge advocate, on behalf of the government, has the last word in the case. The president announces: *The court will be closed*.

21. All persons in the court room withdraw except the members of the court, who proceed to a finding in the

case. After deliberating over the case to such extent as may be necessary and discussing it to the extent desired by the members, the president announces: *In the absence of objection, we will proceed to vote on a finding in this case.*

The president reads, or causes to be read, the first specification and then calls upon each member, starting with the junior, to register his vote on the finding. The remaining specifications to a charge are taken up in their order and each voted on in like manner. Then, the charge is voted on. The members register their votes: *guilty or, not guilty, or, sustain the plea, or, guilty as plead.* The president of the court records the votes and announces the result at the end of each voting period. The majority rules. In case of a tie in the vote upon a certain specification the finding is "not guilty," in other words, the accused is given the benefit.

22. After arriving at a finding on all the specifications and charges, and having verified same, the president announces: *The court will be opened.* The judge advocate is notified and the parties that withdrew return to the court room as in paragraph 8. The president inquires: *Is there anything further to submit in this case?*

If there is nothing further, the judge advocate so announces. If there is evidence of previous convictions that have been referred to the court by proper authority, the judge advocate announces: *The judge advocate has the following evidence of previous convictions to present for the consideration of the court.* The judge advocate reads the evidence of previous convictions and, after completing each case, the accused is permitted to verify the same and add such remarks as may be appropriate. The president announces: *The court will be closed.* All except the members of the court again withdraw, and the court proceeds to a sentence in the case.

23. In arriving at a sentence, after a finding of guilty, the court proceeds as follows:

(a) One member of the court is detailed to verify the maximum

limit of punishment that may be awarded in the case. This precaution is taken to avoid a sentence greater than the maximum authorized.

(b) The president of the court calls upon members to submit sentences. Those who so desire, write out a sentence on a piece of paper and pass it to the president. When one or more have been received, the president arranges them in the order of their severity and inquires: *Are any other sentences proposed?* If there be none, the president selects the least severe sentence that has been proposed, reads it, and calls for a vote on it.

(c) The members vote "yes," indicating that they concur in the sentence or "no," indicating that they do not concur in it. The voting starts with the junior member of the court, and proceeds as indicated previously when voting on the finding. The president records the vote and announces the result. The majority rules. If there is a tie vote the sentence is lost. In this case the court proceeds to vote in like manner upon the next least severe sentence proposed. Should this also be lost, voting is continued on sentences until one is carried. This is the sentence of the court.

24. The judge advocate is recalled and the president gives him the findings and sentence, which he preserves for record in the case. The court then proceeds to the consideration of other business or adjourns to meet at the call of the president; or adjourns to meet at a certain time; or takes a recess for such a time.

25. In the preparation of the record of a case the reporter writes up all the proceedings, entering everything that transpires during the trial, including all the evidence, objections, rulings of the court, etc. The judge advocate is

required to enter the findings and the sentence in the record in his own handwriting or on a typewriter, in which latter case he is required to certify that he personally recorded the findings and sentence. The record of the trial is signed by the president of the court and the judge advocate, sealed, and mailed to the convening authority for final action.

Q. In comparison with the proceedings of a civil court, what are the duties of the members and of the judge advocate of a court-martial?

- A. The members of the court act in the capacity of both judge and jury.
2. The judge advocate is the prosecuting attorney, or state's attorney.

Q. What action is taken by a member of the court when he is unable to attend a session?

- A. He will communicate the cause to the judge advocate, and the same will be entered on the record of the proceedings.

Q. Who is the president of a general court-martial?

- A. The president of the court is not announced. The senior officer present acts as president.

Q. What are the duties of the president of a general court-martial?

- A. 1. He has the ordinary duties and privileges of the member of a court.
2. He is the organ of the court to maintain order and conduct its business.
3. He speaks and acts for the court in every instance where a rule of action has been prescribed by law, regulations or its own resolution.
4. He administers the oath to the judge advocate.
5. He authenticates by his signature, all acts, orders and proceedings of the court requiring it.
6. He takes the proper steps to insure prompt trial and disposition of all charge referred to the court and keeps the court advised thereof.

Q. What are the duties of the judge advocate with regard to the accused prior to the assembling of the court for his trial?

- A. 1. He should acquaint the accused with the accusations against him.

2. He should inform him of his right to have counsel, and arrange for the detail of counsel when one is desired by the accused.

3. He should inform him of his right to testify in his own behalf or to make a statement to the court.

4. He should furnish him with a copy of charges against him if so desired.

5. He may ask the prisoner how he intends to plead; but, when the accused is an enlisted man, he should in no case try to induce him to plead guilty or leave him to infer that if he does so his punishment will be lighter.

Q. When the accused decides to plead "Guilty," what are the duties of the judge advocate towards him?

- A. 1. Advise him of his right to introduce evidence in explanation of his offence, and assist him in securing it.

3. During the trial he will see that the accused has full opportunity to interpose such pleas and make such defence as may best bring out the facts, the merits, or the extenuating circumstances of the case.

3. In so far as such action may be taken without prejudice to the accused, any advice given him by the judge advocate should be given or repeated in open court and noted on the record.

Q. What are the duties of a judge advocate with respect to the witnesses before the trial of a case begins?

- A. He will summon the necessary witnesses, make a preliminary examination of those for the prosecution, and, as far as possible, systematize his plans for conducting the case.

Q. What are the duties of a judge advocate during the trial of a case?

- A. 1. He conducts the case for the government and prepares the record.
2. He executes all the orders of the court.
3. He reads the convening order to the accused; swears the members of the court, the interpreter, the reporter and all witnesses.
4. He arraigns the accused; examines the witnesses.
5. He keeps or superintends the keeping of an accurate record of the proceedings and affixes his signature to each day's proceedings.

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- Q. What are the duties of the counsel of the accused?*
- A. He should guard the interests of the accused by all honorable and legitimate means known to the law, as far as consistent with military interests. He should not obstruct the proceedings with frivolous and manifestly useless objections.
- Q. May a soldier be detailed as the stenographer of a court?*
- A. He may. He will be allowed extra pay at the rate of 5 cents for each 100 words taken in shorthand and transcribed.
- Q. Under what conditions is a challenged member of a court excused?*
- A. 1. That he sat as a member of a court of inquiry that investigated the charges.
2. That he has personally investigated the charges and expressed an opinion thereon, or that he has formed a positive and definite opinion as to the guilt or innocence of the accused.
3. That he is the accuser.
4. That he is to be a witness for the prosecution.
5. That (upon a rehearing of the case) he sat as a member on a former trial.
6. That, in the case of the trial of an officer, the member will be promoted by dismissal of the accused.
7. That he is related by blood or marriage to the accused.
8. That he has a declared enmity against the accused.
- Q. May the judge advocate challenge members of the court?*
- A. While there is no statutory authority for it, the practice is that he may.
- Q. What action is taken by a member of a court who has not been challenged, but, nevertheless, believes himself to be disqualified?*
- A. He may announce his disqualification in open court in order that he may be challenged, or he may apply to the appointing authority to be relieved.
- Q. What are the different pleas in court-martial procedure?*
- A. 1. Plea to the jurisdiction.
2. Plea in abatement.
3. Plea in bar of trial.
4. Plea to the general issue.
- Q. What is a plea to the jurisdiction?*
- A. A plea to the jurisdiction denies the right of the court to try the case.
- Q. What are the grounds for the plea to the jurisdiction?*
- A. 1. That the court was appointed by an officer who did not have the legal authority to do so.
2. That it is composed wholly or in part of members not authorized to sit upon such a court-martial.
3. That the accused is not subject to the jurisdiction of the court.
4. That the court has not the legal power to try the offense charged.
- Q. What is a plea in abatement?*
- A. It is based upon some defect in the charge or specification, and is one that operates merely to delay the trial. An accused who submits a plea in abatement must show how the error may be corrected. The judge advocate will correct the error so as to meet the objection, and the trial proceeds.
- Q. What are the pleas in bar of trial?*
- A. 1. Statute of Limitations.
2. Pardon.
3. Constructive condonation.
- Q. What is the Statute of Limitations?*
- A. They are statutes of which the accused may take advantage, thereby depriving the Government of the power to try or punish him after the lapse of a specified

period following the commission of the offense. They are enacted to secure the prompt punishment of criminal offenses, and to obtain the attendance of the witnesses at the trial while the recollection of the event is still fresh in their minds. In court-martial practice, prosecutions are limited both as to time and as to number.

Q. For what crimes are there no statutes of limitations?

- A. 1. Desertion in time of war.
- 2. Mutiny.
- 3. Murder.

Q. In what cases is the statutory period extended to three years?

- A. 1. Desertion in time of peace.
- 2. The crimes (felonies) enumerated under the 93rd Article of War.
- 3. The crimes and offenses (Frauds against the Government) enumerated in the 94th Article of War.

Q. What is the ordinary period of the statute of limitations?

- A. Two years.

Q. How is the time of the statute of limitations computed?

- A. The point at and from which the period of limitation begins is the date of the commission of the offense. The point at which the period of limitation terminates, and from which said period is to be reckoned back, is the date of the arraignment of the accused.

Q. What periods of time are excluded in the computation of the period of limitation?

- A. 1. The period of any absence of the accused from the jurisdiction of the United States.
- 2. Any period during which, by reason of some manifest impediment, the accused shall not have been amenable to military justice.

Q. In military practice may a person be tried twice for the same offense?

- A. He may not.

Q. What constitutes a "trial?"

- A. When the accused has been duly convicted or acquitted by a court-martial he has been "tried."

Q. What is meant by pardon?

- A. A pardon is the act of the President which exempts the individual on whom

it is bestowed from the punishment which the law inflicts for the crime that he has committed.

Q. What is meant by constructive condonation?

- A. Where a deserter has been restored to duty, without trial, by the authority competent to order his trial, this action is regarded as a constructive condonation of the offense and may be pleaded in bar of trial subsequently ordered.

Q. What are some of the inadmissible special pleas?

- A. 1. Former punishment; that is, the accused has already been adequately punished by his commanding officer for the offense.
- 2. Illegal enlistment; that is, that the accused claims to have enlisted under age, without the necessary consent of his parents or guardian.
- 3. Release from arrest.
- 4. Undergoing sentence of a court-martial.
- 5. Long delay in bringing to trial, but within the period of the statutes of limitation.
- 6. Malice of the accuser.
- 7. Bad character of the accuser.
- 8. Intoxication.
- 9. Insanity.
- 10. Obedience to military order.
- 11. Mistake of fact or law.

Q. What are the pleas to the general issue?

- A. Usually the plea of the accused is "guilty" or "not guilty" to each charge and specification; or, guilty to a specification, excepting certain words, and to the excepted words not guilty; or, as when charged with an offense which includes a lesser one of a kindred nature, guilty to the specification excepting certain words and substituting therefor certain others, to the excepted words, not guilty; to the substituted words, "guilty," and to the charge not guilty, but guilty of the included lesser offense.

Q. When a plea of guilty is entered, does that exclude evidence being taken?

- A. It does not. The court should take evidence after a plea of guilty, except when the specification is so descriptive as to disclose all the circumstances of mitigation or aggravation.

Q. What action is taken upon a plea of guilty entered by the accused?

A. The president of the court is required to explain:

1. The various elements which constitute the offense charged.
2. The maximum punishment which may be adjudged by the court for the offense to which the accused has pleaded guilty.

NOTE.—The accused will then be asked whether he fully understands that, by pleading guilty to such a charge or specification, he admits having committed all the elements of the crime or offense charged, and that he may be punished as stated. If he replies in the affirmative, the plea of guilty will stand; otherwise a plea of not guilty will be entered.

Q. When an accused pleads guilty and thereafter makes a statement at variance with his plea, what action is taken?

A. The plea of guilty is withdrawn and a plea of not guilty substituted therefor.

Q. May a plea of "guilty, without criminality" be entered.

A. No. It is the same as a plea of not guilty.

Q. What action is taken when an accused refuses to plead, stands mute, or answers irrelevantly?

A. The court proceeds to trial and judgment as if he had pleaded "not guilty."

Q. What is a nolle prosequi?

A. A declaration of record on the part of the prosecution that it withdraws a charge or specification from the investigation and will not prosecute the same at the trial.

Q. Who has authority to enter a nolle prosequi?

A. The convening authority.

Q. What are the principal grounds for nolle prosequi in court-martial practice?

- A. 1. The fact that the charge or specification is discovered to be substantially defective and insufficient in law.
2. That it is ascertained the allegations cannot be proved.
3. That the testimony available is not sufficient to sustain the allegations.
4. That the criminality of one of the accused, where there are several, cannot be established.
5. That it is proposed to use one of the accused as a witness.

Q. Who procures the attendance of witnesses before a court-martial?

A. The judge advocate.

Q. How is the attendance of witnesses ordinarily secured?

A. 1. Persons in the military service stationed at or near the place of trial: (a) By informal notice served by the judge advocate upon the person concerned. (b) If for any reason a formal notice is required, the judge advocate will request the commanding officer to order the witness to attend.

2. Persons in the military service stationed at points distant from the place of trial, when mileage is involved: The judge advocate will request that orders issue for witness to attend.

3. Civilian witnesses: The judge advocate will endeavor to secure attendance by correspondence, sending the witness subpoenas in duplicate and a request to accept service by correspondence. If such informal methods are ineffective, formal duplicate subpoena will be issued by the judge advocate for service on the witness. If the witness is at or near the post where the court is sitting, service may be made by the judge advocate or by a person designated by him. If the witness is at or near another post, the judge advocate will send the subpoena direct to the commanding officer of such post, requesting the service of same. If the witness does not reside near any military post or command, the judge advocate will send the subpoena to the department commander requesting service.

Q. In what class of cases are depositions prohibited?

A. They cannot be introduced by the prosecution in capital cases.

Q. What is a subpoena duces tecum?

A. It is a subpoena requiring a person to present himself before the court, bringing with him certain books, papers or documents which it is desired to introduce in evidence.

Q. How may the attendance of a civilian witness be compelled?

A. By a warrant of attachment.

Q. What action is taken when a warrant of attachment becomes necessary?

- A. 1. The judge advocate will issue the warrant of attachment and deliver it to the officer designated by the department commander for execution.
2. The following papers will accompany the warrant of attachment.
 - (a) The original order (and modifying orders) appointing the court for the trial of the case in which the witness is to testify.
 - (b) A copy of the charges and specifications in the case as referred for trial.
 - (c) The original subpoena, with the proof of service.
 - (d) An affidavit of the judge advocate or summary court officer that the person being attached is a material witness in the case; that he has failed and neglected to appear, although sufficient time has elapsed for that purpose; and that no valid excuse has been offered for such failure to appear.

Q. What action is necessary when force has to be resorted to to compel the attendance of a witness?

- A. The post commander nearest the residence of the witness will furnish a military detail sufficient to execute the process.

Q. If, while serving a warrant of attachment for a witness, an officer is served with a writ of habeas corpus from a United States Court or a United States Judge, what action is taken?

- A. 1. The writ will be promptly obeyed.
2. The person alleged to be illegally restrained of his liberty will be taken before the court from which the writ has issued.
3. A return will be made setting forth the reasons for the restraint.
4. The officer upon whom such a writ is served will at once report by telegraph the fact of such service direct to the Adjutant General of the Army and to the Commanding General of the department.

Q. If a writ of habeas corpus is issued by a

state court or judge, what action is taken?

- A. 1. The officer will make respectful return, in writing, informing the court that he holds the person named in the writ, by authority of the United States, pursuant to a warrant of attachment, issued under Section 3 of the Act of Congress, approved August 29th, 1916, by a judge advocate of a lawfully convened general, special (or summary) court-martial, and that the Supreme Court of the United States has decided that state courts and judges are without jurisdiction in such cases.
2. After having made the return, it is the duty of the officer to hold the prisoner in custody under his warrant of attachment, and to refuse obedience to the mandate or process of any government except that of the United States.
3. It is the duty of the officer not to take the prisoner, nor suffer him to be taken, before a state judge or court upon a writ of habeas corpus issued under state authority.

Q. What action is taken when a civilian witness, who has been duly subpoenaed before a general court-martial, refuses to appear or qualify as a witness?

- A. He will at once be tendered or paid, by the nearest quartermaster, one day's fees and mileage for the journeys to and from the court and will thereupon be again called upon to comply with the requirements of the law.

The 23rd Article of war (new) provides: Every person not subject to military law, who, being duly subpoenaed to appear as a witness before a military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry, or board, wilfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States, or in a court of original criminal jurisdiction in any of the territorial possessions of the United States, jurisdiction hereby being conferred upon such courts, for such purpose; and it shall be the duty of the United States District Attorney or other officer prosecuting for the government in any such court of

original criminal jurisdiction, on the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than \$500, or imprisonment not to exceed six months, or both, at the discretion of the court: Provided that the fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States, shall be duly paid or tendered said witness, such amounts to be paid out of the appropriation for the compensation of witnesses.

Q. May a court-martial punish for contempt?

A. A court-martial may punish, at discretion, subject to the limitations in A. W. 14 (with respect to summary courts) any person who uses any menacing words, signs or gestures in its presence, or who disturbs its proceedings by any riot or disorder. Such punishments require the approval of the reviewing authority in order to become effective.

Q. Under what circumstances are depositions admissible before court-martial?

A. A duly authenticated deposition, taken upon reasonable notice to the opposite party, may be read in evidence before any military court or commission in any case not capital; or in any proceeding before a court of inquiry or a military board, if such deposition is taken in cases where the witness resides, is found, or is about to go, beyond the state, territory or district in which the court, commission, or board is ordered to sit; or beyond the distance of 100 miles from the place of trial or hearing; or when it appears to the satisfaction of the court, commission, or board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing; provided, that testimony by deposition may be adduced for the defense in capital cases.

Q. What is the procedure when depositions are to be taken?

A. 1. All the interrogatories to be propounded are entered on the form for interrogatories and deposition, and the trial judge-advocate, summary

court officer, or recorder will take appropriate steps to cause the desired deposition to be taken with the least practicable delay.

2. In an ordinary case he will either send the interrogatories to the commanding officer of the post, recruiting station or other military command at or near which the person whose deposition is desired is stationed, resides or is understood to be; or will send them to some other responsible person, preferably a person competent to administer oaths, at or near the place at which the person whose deposition is desired is understood to be. In a proper case, the interrogatories may be sent to the department or superior commander or to the witness himself, and in any case they will, when necessary, be accompanied by a proper explanatory letter.
3. When interrogatories are received by a commanding officer he will either take, or cause to be taken, the deposition thereon. He may send an intelligent enlisted man—preferably a noncommissioned officer, if available—to the necessary place for the purpose of obtaining the deposition, or he may arrange by mail or otherwise that the deposition be taken. The deposition will be taken with the least practicable delay and, when taken, will be sent at once direct to the judge advocate of the court-martial trying the case.
4. If the witness whose deposition is desired is a civilian, the judge advocate, or other person sending interrogatories, will inclose with them a prepared voucher for the fees and mileage of the witness, leaving blank such spaces therein as may be necessary, together with the required number of copies of the order appointing the court, commission or board. The judge advocate, summary court officer, or recorder will also send with the interrogatories a subpoena in duplicate requiring the witness to appear in person at the time and place to be fixed by the officer, military or civil, who is to take the deposition. If the name of this officer is not known, the space provided for it will be left blank.

5. If a military officer takes the deposition, he will complete the witness voucher, certify it, and transmit it to the nearest disbursing quartermaster for payment.
 6. When the deposition is taken by a civil officer, he will be asked to obtain and furnish to the military officer, requested or designated to take the deposition or cause it to be taken, the necessary data for the completion of the witness voucher, and the latter will complete the voucher, certify it, and transmit it to the nearest disbursing quartermaster for payment.
 7. In the case of military witnesses, subpoena will not accompany the interrogatories, but the officer before whom the deposition is to be taken will take the necessary steps to have the witnesses appear at the proper time and place.
- Q. What is the duty of the court with respect to the protection of witnesses?*
- A. It is the duty of the court to protect every witness from irrelevant, insulting, or improper questions; from harsh or insulting treatment, and from unnecessary inquiry into his private affairs. The court must forbid any questions which appear to be intended to insult or annoy any witness, or which, though proper in themselves, appear to be needlessly offensive in form.
- Q. Under what conditions may evidence of character and the services of the accused be important?*
- A. 1. When the evidence of the guilt is not strong and the good reputation of the accused will strengthen the presumption of innocence.
2. When the punishment is discretionary, such evidence may be introduced with a view to inducing the court to impose a milder sentence.
3. When the punishment is mandatory, such evidence may be introduced with a view to inducing the court to recommend clemency.
4. In any case, such evidence may be introduced with a view to inducing the reviewing authority to extend clemency.
- Q. Is evidence of the bad character of the accused admissible?*
- A. It is not. If the accused takes the wit-

ness stand in his own behalf, his veracity as a witness may be attacked as in the case of any other witness.

Q. May the accused appear as a witness in his own behalf?

A. Yes. The accused "shall at his own request, but not otherwise, be a competent witness. His failure to make such request shall not create any presumption against him."

Q. What procedure is required when the accused declines to appear as a witness in his own behalf or to make a statement?

A. In every case tried by a general court-martial, in which the accused does not testify or make a statement in his own behalf, it must appear on record that the president of the court explained to the accused that he was privileged to testify in his own behalf if he so desire or to make an unsworn statement to the court in denial, in explanation, or in extenuation of the offense with which he stood charged. The explanation by the president, and the reply of the accused thereto, shall appear upon the record of the trial. The same rule applies in the case of a special court-martial, where the evidence is recorded.

Q. What are the general rules regarding the examination of witnesses.

A. 1. They are usually examined separately. This rule is not inflexible. It is in practice subject to the discretion of the court, and it is never so rigidly observed as to exclude the testimony of one witness because he has been present at the examination of other witnesses.

2. The examination of witnesses usually proceeds in the following sequence:

- (a) Witnesses for the prosecution, direct, cross, re-direct and re-cross, examination.
- (b) Witnesses for the defense in the same order as (a).
- (c) Witnesses for the prosecution in rebuttal in the same order as in (a).
- (d) Witnesses for the accused in rebuttal of those introduced by the prosecution, in the order specified in (a).

- (e) Witnesses for the court, in the order specified in (a).

The court may, in the interest of truth and justice, call or recall witnesses or permit their recall at any stage of the proceedings. It may permit material testimony to be introduced by either party quite out of its regular order and place, and permit a case once closed by either or both sides to be reopened for the introduction of testimony previously omitted, if convinced that such testimony is so material that its omission would leave the investigation incomplete. In all such cases, both sides must be present, and any testimony thus received is subject to cross-examination and rebuttal by the party to whom it may be adverse.

3. Leading questions which a witness may answer by "yes" or "no" should not be asked, except on cross-examination; to abridge the proceedings where the witness may be led at once to points on which he is to testify; when the witness appears to be hostile to the party calling him, or is manifestly unwilling to give evidence; where there is an erroneous statement in the testimony, evidently caused by fault of memory, and where the nature of the case is such that the mind of the witness cannot be directed to the subject under inquiry by other means.

Q. Are affidavits admissible in evidence?

- A. They are not, unless expressly consented to by the judge advocate and the accused, with full knowledge of his rights.

Q. What restriction is placed upon the knowledge of the court with reference to statement of service and the evidence of previous convictions of the accused?

- A. The court will not be permitted to see either until after they have arrived at a finding. The statement of service may be introduced in evidence by the accused as proof of good character.

Q. What previous convictions will be considered by a court-martial?

- A. 1. Only those covering offenses committed within the year prior to the date of the offense for which the accused is being tried, and in the current enlistment.
2. These will be considered only when they are properly referred by the convening authority.

Q. What is the object of introducing evidence of previous convictions before court-martial on the finding of guilty?

- A. The object is to see if the prisoner is an old offender, and therefore less entitled to leniency than if on trial for his first offense.

Q. What is the rule regarding the punishment to be awarded.

- A. That the least punishment by which discipline can be efficiently maintained is the proper amount.

Q. What are the legal punishments that general court-martials may impose upon officers?

- A. 1. Death.
2. Dismissal, with confinement at hard labor.
3. Dismissal.
4. Loss of rank.
5. Suspension from rank, command, or duty, with or without loss of pay or part of pay.
6. Fine or forfeiture of pay.
7. Confinement to limits of post or command.
8. Reprimand.
9. Admonition.

Q. What legal punishments may courts-martial impose upon enlisted men?

- A. 1. Death.
2. Dishonorable discharge.
3. Confinement at hard labor.
4. Forfeiture of pay.
5. Hard labor without confinement.
6. Forfeiture of pay and allowances.
7. Detention of pay.
8. Reprimand.

Q. What are the rules regarding the dishonorable discharge of a soldier?

- A. 1. A dishonorable discharge can be imposed only pursuant to the sentence of a general court-martial.
2. The date on which the order promulgating the sentence is received at the post where the soldier is held, is the date of discharge.
3. A sentence adjudging a dishonorable discharge to take effect at such period during a term of confinement as may be designated by the reviewing authority, is illegal.

Q. May the deposits of a soldier be forfeited by the sentence of a court-martial?

- A. They may not. They are exempt from liability to sentence of a court-martial,

imposing a forfeiture of pay and allowances. To sentence a soldier to deposit a certain amount of his pay is illegal.

Q. When a disciplinary punishment is awarded a soldier by his company commander, what record is made of it?

A. A brief record will be made showing:

1. Name of the accused.
2. Brief statement of the offense, showing time and place.
3. Statement as to whether or not the accused demanded trial by summary court.
4. Disposition of case, with date and punishment awarded.
5. Whether or not appeal was made to higher authority.
6. Decision of higher authority on appeal.
7. Whether accused was required to serve punishment pending appeal.

Q. What limitations are placed on courts-martial in imposing punishments on soldiers?

- A. 1. Punishing by branding, tattooing or marking the body, or by flogging is prohibited.
2. The following have been discarded: Carrying loaded knapsack; wearing irons; shaving the head; placarding; pillory; stocks, and tying up by the thumbs.
3. Military duty as a form of punishment tends to degrade duty and is to the prejudice of the best interests of the service. Punishment, such as imposing tours of guard duty, requiring a soldier to blow all calls for a period of time, are not imposed.
4. Solitary confinement on bread and water diet, and the placing of a prisoner in irons, are regarded as a means of enforcing prison discipline. They are not to be imposed by a court-martial as a punishment.

Q. Where are the limits of punishment that may be imposed by a court-martial upon a soldier on conviction to be found?

- A. The latest executive order on the subject became operative on March 1st, 1917, as to offenses committed on and after that date, and as to criminal acts committed prior to that date, whose maximum punishment was not prescribed in the Executive Order of September 5th, 1914, published in G. O. No. 70. This

order remains operative as to offenses committed before March 1st, 1917, except as to criminal acts whose maximum punishment has been decreased by this order.

Q. What are the general limitations with regard to the punishment that a court-martial may impose on a soldier?

- A. 1. A court shall not, by a single sentence which does not include dishonorable discharge, adjudge against a soldier:
- (a) Forfeiture of pay at a rate greater than two-thirds of his pay per month.
 - (b) Forfeiture of pay in an amount greater than two-thirds of his pay for six months.
 - (c) Confinement at hard labor for a period greater than six months.
2. A court shall not, by a single sentence, adjudge against a soldier:
- (a) Detention of pay at a rate greater than two-thirds of his pay per month.
 - (b) Detention of pay in an amount greater than two-thirds of his pay for three months.
 - (c) Hard labor without confinement for a period greater than three months.

Q. May general prisoners be tried by summary court?

A. They may.

Q. May the summary court officer be challenged by the accused?

A. The summary court officer is not subject to challenge.

Q. What is the limit of punishment that may be imposed upon a soldier by the summary court?

A. Not to exceed confinement at hard labor for three months, or forfeiture of three months' pay, or both; and, in addition thereto, reduction to the ranks in the cases of noncommissioned officers, and reduction in classification in the cases of first-class privates.

Q. When the summary court officer is also the commanding officer, what action is necessary with respect to a sentence of the summary court?

A. No sentence of such summary court-martial, adjudging confinement at hard labor or forfeiture of pay, or both, for a period in excess of one month, shall

be carried into execution until the same has been approved by superior authority.

Q. What are the functions of summary courts-martial?

- A. 1. Power to administer oaths.
2. To hear and determine cases and, when satisfied of the guilt of the accused party, to adjudge the punishment to be inflicted.

The following is the procedure in the institution and conduct of a trial before a summary court-martial:

1. A summary court officer is appointed in every command by the commanding officer thereof, either in formal orders or verbally. This officer is usually the officer next in rank to the commanding officer, but may be any officer whom the commanding officer selects.
2. A soldier commits an offense for which he may be properly tried by summary court. Charges and specifications are preferred against him on the blank forms provided for that purpose. These charges are made in triplicate and forwarded to the commanding officer for his action. They are usually handed in at the adjutant's office with the morning report, but may be submitted at any time.
3. The charge sheet contains:
 1. The name and rank of the accused.
 2. Statement of service.
 3. Date of arrest or confinement.
 4. Number of previous convictions.
 5. Witnesses for the prosecution and defense.
 6. A statement of the charge.
 7. A statement of the specification.
 8. Signature of the officer preferring the charges.
4. The commanding officer determines whether or not the case shall be brought to trial and, when trial is decided upon, the charges are forwarded by indorsement to the summary court officer, the indorsement being signed by the adjutant.
5. The summary court usually sits at a stated hour daily, except Sunday (no legal objection to sitting on Sunday), at such time as will least interfere with the training of troops. The accused and all witnesses are ordered to appear

at the specified time, and the trial proceeds much in the manner of civil police courts.

6. The accused is brought before the summary court officer, who reads the charges and specifications to him and calls upon him to plead to same. The plea is usually "guilty" or "not guilty."

NOTE.—When the accused pleads guilty the summary court officer will explain to him:

- (a) The elements constituting the offense to which he has pleaded guilty, and
- (b) The maximum punishment therefor.

He will ask him whether he fully understands:

- (a) That by pleading guilty thereto, he admits all the elements of the crime or offense, and
 - (b) That he may be punished as explained above.
7. Witnesses for the prosecution are called and sworn by the summary court officer, who conducts the direct examination, after which the accused is permitted to cross-examine. These are followed by the witnesses for the defense, who are likewise sworn and examined. The accused may then be sworn as a witness in his own behalf, make a statement and be cross-examined by the summary court, or he may make an unsworn statement, in which case he is not subject to cross-examination.
8. After all the evidence has been presented in the case, the summary court officer arrives at a finding and enters the same in the appropriate space on the blank form. This is followed by the sentence he imposes on the accused, in case of a finding of guilty. He then signs the blank at the place provided for his signature.
9. The blanks, thus completed, are turned in to the adjutant, who examines the finding and verifies the sentence to see that it is not in excess of the limit prescribed in the executive order of the President, and submits them to the commanding officer for his action.
10. If the commanding officer concurs in the sentence, he approves the same by affixing his signature and dating it at

the appropriate place on the blank, and the record of the court is complete and the sentence may be executed.

11. The second copy of the blank is then completed by making it an exact copy of the original, and it is certified as a true copy by the adjutant.
12. The original is filed at post headquarters and forms the permanent record of cases tried by summary court. The second copy, authenticated by the adjutant, is furnished the company commander of the accused and forms the company record of the trial. The third is forwarded to the officer having general court-martial jurisdiction over the command.

Q. What action is necessary before a sentence of a court-martial may be carried into execution?

- A. It must be approved by the officer appointing the court, or by the officer commanding for the time being. The acquittal of the accused does not entitle him to be released from confinement at once. The acquittal is not effective until it has been acted upon by the proper reviewing authority.

Q. What is the effect of a disapproval of a finding and sentence of a court-martial on the part of the reviewing authority?

- A. A disapproval of the sentence of a court-martial by the reviewing authority is not a mere expression of disapprobation, but is a final determinate act putting an end to the proceedings in a particular case and rendering them entirely nugatory and inoperative; and the legal effect of a disapproval is the same whether or not the officer disapproving is authorized finally to confirm the sentence. But to be thus operative, the disapproval should be expressed. The effect of the entire disapproval of a sentence is not merely to annul the same as such, but also to prevent the accruing of any disability or forfeiture, which would have been incidental on approval.

Q. How are general court-martial trials of enlisted men published to the service?

- A. By general court-martial orders, promulgated from headquarters of the officer authorized to convene general courts-martial.

Q. What elements does a G. C. M. O. contain?

- A. So much of the proceedings of the court as will give the charges and specifications, the pleas, findings, and sentences, and the action and remarks of the reviewing authority on the case. If the charges contain matter unfit for publication, it will be omitted from the order.

Q. In what case is the confirmation of the President required?

- A. 1. Any sentence respecting a general officer.
2. Any sentence extending to the dismissal of an officer, except that in time of war a sentence extending to the dismissal of an officer below the grade of brigadier-general may be carried into execution upon confirmation by the commanding general of the army in the field or by the commanding general of the territorial department or division.
3. Any sentence extending to the suspension or dismissal of a cadet.
4. Any sentence of death, except in the cases of persons convicted in time of war of murder, rape, mutiny, desertion, or as spies, and in such excepted cases, a sentence of death may be carried into execution upon confirmation by the commanding general of the army in the field, or by the commanding general of the territorial department or division.

Q. What is meant by mitigation of punishment?

- A. A reduction in quantity or quality, the general nature of the punishment remaining the same.

Q. May the sentence of a court-martial be added to in any way?

- A. Neither the reviewing authority nor any other officer is authorized to add to the punishment imposed by a court-martial.

Q. Under what circumstances may soldiers convicted by court-martial be confined in a penitentiary?

- A. 1. Desertion in time of war.
2. Repeated desertion in time of peace.
3. Mutiny.
4. When the offense is of a civil nature, or by commutation of the death sentence.

5. On conviction of two or more acts or omissions, any one of which is punishable by confinement in a penitentiary.

Q. What is fraudulent enlistment?

- A. An enlistment procured by means of wilful misrepresentation in regard to a qualification or disqualification for enlistment; or by intentional concealment of a disqualification which has had the effect of causing the enlistment of a man not qualified to be a soldier and who, but for such false representation or concealment, would have been rejected.

Q. What elements must be proved to convict on a charge of fraudulent enlistment?

- A. 1. The enlistment of the accused in the military service as alleged.
2. That the accused wilfully misrepresented a certain fact, or facts, regarding his qualifications or disqualifications for enlistment, or wilfully—that is, intentionally—concealed a disqualification as alleged.
 3. That enlistment was procured by such misrepresentation or concealment.
 4. That under such enlistment, the accused received either pay or allowances, or both, as alleged.
 5. Where a soldier enlists without a discharge, the proof should include the fact that at the time of the alleged enlistment the accused was a soldier, and that the enlistment was entered into without a regular discharge from the former enlistment.

Q. What is desertion?

- A. An absence without leave, accompanied by the intention not to return. Both elements are essential to the offense. The offense becomes complete when the person absents himself without authority from his place of service with intent not to return thereto. A prompt return and repentance are no defense, nor is it a defense that the deserter at the time of departure intended to report for duty elsewhere. Thus, a soldier who leaves his post, intending never to go back unless a certain event happens, or leaves his post with such intent and reports at another post, is a deserter; but unless such intent exists at some time, the soldier cannot be a deserter, whether his purpose is to stay away a definite or an indefinite time.

Where a soldier, without having been discharged, again enlists in the army, or in the militia in the service of the United States, such enlistment is, by the twenty-ninth article of war, made sufficient evidence of desertion. In such case, proof of the intent to stay permanently away from his former place of service, and the status of absence without leave therefrom, are unnecessary.

Q. What elements must be proved to convict a soldier of desertion?

- A. 1. That the accused absented himself or remained absent without authority from his place of service as alleged.
2. That he intended, at the time of absenting himself or at some time during his absence, to remain away permanently from such place.
 3. That his absence was of a specified duration and was terminated as alleged.
 4. That his act was done, if so alleged, in the execution of a certain conspiracy, or in the presence of a certain outbreak of Indians, or of a certain unlawful assemblage which his organization was opposing, or in time of war, where the court will not take judicial notice of the existence of a status of war.
 5. Where the soldier enlisted without a discharge: that the accused was a soldier in a certain organization of the army, as alleged; and that without being discharged from such organization, he again enlisted in the army, navy or marine corps, or some foreign army, as alleged. In this case, proof of the absence without leave and of the intention not to return become unnecessary.

Q. What is absence without leave?

- A. When any person subject to military law is, through his own fault, not at the place where he is required to be, at a time when he should be there, he is said to be "absent without leave," or AWOL.

Q. What elements must be proved in AWOL.

- A. 1. Where the accused fails to appear or goes from a place of duty:
- (a) That a certain authority appointed a certain time and place for a certain duty by the accused, as alleged.

- (b) That he failed to report at such place at the proper time, or, having so reported, went from the same without authority from any one competent to give him leave to go.
- 2. Where the accused is charged with absenting himself without proper leave:
 - (a) That the accused absented himself from his command, guard, quarters, station, or camp for a certain period, as alleged.
 - (b) That such absence was without authority from anyone competent to give him leave.

Q. Distinguish between arrest and confinement?

- A. The arrest of an officer has been compared to an enlargement on bail, the security being the officer's commission. It is for this reason that the punishment for breach of arrest may include dismissal. The distinction between arrest and confinement lies in the difference between the kind of restraint imposed. In arrest the restraint is moral, imposed by the orders fixing the limit of the arrest, or by the terms of the Article.

Q. What constitutes breach of arrest?

- A. The offense is committed when the restrained person infringes the limits set by orders, or by the 69th Article of War. The intention or motive that actuated him is immaterial to the question of guilt, though, of course, proof of inadvertence or bona fide mistake is admissible in guiding the court in fixing punishment. The unlawfulness of the arrest is a valid defense, but innocence

of the accusation for which the arrest is imposed is entirely irrelevant.

Q. What elements must be proved to convict of a breach of arrest?

- A. 1. That the accused was duly placed in arrest.
- 2. That before he was set at liberty by proper authority he transgressed the limits fixed by proper authority or by the 69th Article of War.

Q. What is a countersign?

- A. A countersign is a word given from the principal headquarters of a command to aid guards and sentinels in their scrutiny of persons who apply for permission to pass the lines.

Q. What is a parole?

- A. A parole is a word used as a check on the countersign. It is imparted only to those who are entitled to inspect the guards, and to commanders of guards.

Q. What constitutes the offense of making known the countersign and parole?

- A. The class of persons entitled to receive the countersign will expand and contract with the varying circumstances of war. Who these persons are will be determined largely, in any particular case, by the general or special orders under which the accused was acting. It is no defense, under the terms of this law, that the accused did not know that the person to whom he communicated the countersign or parole was not entitled to receive it. Before imparting such a word it behooves a person subject to military law to determine at his peril that the person to whom he presumes to give the countersign or parole is entitled to receive it.

